

FILED

JUL 26 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSA ARZATE MARTINEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75611

Agency No. A79-521-343

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Rosa Arzate de Nieves, a native and citizen of Mexico, petitions pro se for review of the denial of the Board of Immigration Appeals' summary affirmance of an immigration judge's denial of her application for cancellation of removal for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

failure to satisfy the continuous physical presence requirement of 8 U.S.C. § 1229b(b)(1)(A).

Petitioner contends that the IJ erred in concluding that she did not establish ten years of continuous physical presence. 8 U.S.C. § 1252(d)(1) “mandates exhaustion and therefore generally bars us, for lack of subject matter jurisdiction, from reaching the merits of a legal claim not presented in administrative proceedings below.” *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). We lack jurisdiction, because petitioner failed to raise her claim either in her notice of appeal or in her brief to the BIA, and therefore, she has failed to exhaust her administrative remedies. *Id.*

PETITION FOR REVIEW DISMISSED.